Olympic Plating Industries, Inc. *and* United Paperworkers International Union Local No. 50063, a/w United Paperworkers International Union, AFL–CIO, CLC. Case 8–CA–25647

November 26, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed by United Paperworkers International Union Local No. 50063, a/w United Paperworkers International Union, AFL–CIO, CLC (the Union), the General Counsel of the National Labor Relations Board issued a complaint on September 9, 1993, against Olympic Plating Industries, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.[1]

On November 6, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On November 12, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 27, 1993, notified the Respondent that unless an answer was received by October 8, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation, with an office and place of business in Canton, Ohio, has been engaged in the chrome-plating business. Annually, the Respondent provides services valued in excess of $50,000 for Hoover Corporation, a division of Maytag, an enterprise within the State of Ohio. Annually, the Hoover Corporation has sold and shipped from its Ohio facility goods valued in excess of $50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed in the Respondent's plant in Canton, but excluding office and clerical employees, professional employees, research and development employees, engineering employees, technical employees, guards, and foremen and supervisory employees, as defined in the National Labor Relations Act, as amended.

Since about 1987, until on or about June 1991, the Independent Workers of North America, Local 63 (IWNA 63), was the designated exclusive collective-bargaining representative of unit employees, and from 1987 until on or about June 1991, has been recognized as the representative by the Respondent. This recognition was embodied in successive collective-bargaining agreements, the most recent of which is effective from June 24, 1990, to June 24, 1993. In or about June 1991, IWNA 63 became affiliated with the Union, thereafter being known as United Paperworkers International Union, Local No. 50063, a/w United Paperworkers International Union, AFL–CIO, CLC. At all times between 1987 and June 1991, based on Section 9(a) of the Act, IWNA 63 was the exclusive collective-bargaining representative of the unit employees. At all times since June 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

On June 24, 1990, the Respondent and IWNA 63 entered into a collective-bargaining agreement with respect to terms and conditions of employment of unit employees, which agreement was to remain in effect until June 24, 1993. Since June 1991, the Union has

[1] Copies of the complaint that were served by certified mail were returned unclaimed to the Regional Office. Copies served by regular mail to the Respondent and its attorney were not returned. Service was properly accomplished by deposit of these documents in the mail to the last known address of the Respondent. See, e.g., *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992) (not included in bound volume). The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn.6 (1986).

assumed all the rights and obligations of IWNA 63 with respect to this collective-bargaining agreement.

Since on or about January 27, 1993, the Respondent ceased payment of employee medical health insurance payments and employee vacation benefits provided for in the contract. These subjects relate to wages, hours, and other terms and conditions of employment of unit employees, and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

On or about April 7, 1993, the Union requested that the Respondent bargain collectively regarding the effects of the closure of the Respondent's Canton, Ohio facility. On April 14, 1993, the Union and the Respondent met and the parties agreed that: the Respondent would pay the medical claims owed unit employees and/or pay its delinquent insurance premiums; the Respondent would pay employees the contractually required vacation benefits owed to them; and the Respondent would provide an extension of the medical insurance coverage for a period of 30 to 90 days after the close of the facility. These subjects relate to the wages, hours, and other terms and conditions of employment of unit employees and are mandatory. Since about April 19, 1993, the Respondent has failed and refused to bargain collectively about these subjects by failing and refusing to abide by the terms of the April 14, 1993 agreement.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(a)(1) and (5) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments for medical health insurance and vacation benefits and by failing to abide by its April 14, 1993 agreement, we shall order the Respondent to make whole its unit employees by making all payments of medical claims and vacation benefits owed them, and payment of insurance premiums that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent premium payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required premium payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Olympic Plating Industries, Inc., Canton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union regarding the wages, hours, and terms and conditions of employment of employees in the following unit appropriate for purposes of collective bargaining, by failing and refusing to abide by all the terms of the parties' 1990–1993 and April 14, 1993 agreements:

> All production and maintenance employees employed in the Respondent's plant in Canton, but excluding office and clerical employees, professional employees, research and development employees, engineering employees, technical employees, guards, and foremen and supervisory employees, as defined in the National Labor Relations Act, as amended.

(b) Failing and refusing to make employee medical health insurance payments and employee vacation benefits payments as provided in its collective-bargaining agreement with the Union.

(c) Failing and refusing to abide by its April 14, 1993 agreement with the Union to pay medical claims owed unit employees and/or pay its delinquent insurance premiums; to pay employees the contractually required vacation benefits owed to them; and to provide an extension of medical insurance coverage for a period of 30 to 90 days after the close of its facility.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole its unit employees by payment of employee medical health insurance payments and failure to pay employee vacation benefits pursuant to the 1990–1993 contract with the Union.

(b) Make whole its unit employees, with interest, for failure to abide by its April 14, 1993 agreement with the Union in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-

cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail to all unit employees copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 26, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with United Paperworkers International Union Local No. 50063, a/w United Paperworkers International Union, AFL–CIO, CLC regarding the wages, hours, and terms and conditions of employment of the following employees who constitute a unit appropriate for purposes of collective bargaining, by failing and refusing to abide by all the terms of our 1990–1993 and April 14, 1993 agreements:

> All production and maintenance employees employed in our plant in Canton, but excluding office and clerical employees, professional employees, research and development employees, engineering employees, technical employees, guards, and foremen and supervisory employees, as defined in the National Labor Relations Act, as amended.

WE WILL NOT fail to honor the terms of our contract with the Union by failing to pay employee medical health insurance payments and failing to pay employee vacation benefits.

WE WILL NOT fail and refuse to abide by our April 14, 1993 agreement with the Union to pay medical claims owed unit employees and/or pay delinquent insurance premiums; to pay employees the contractually required vacation benefits owed to them; and to provide an extension of medical insurance coverage for a period of 30 to 90 days after the close of our facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by payment of employee medical health insurance payments and vacation benefits pursuant to the terms of our 1990–1993 contract with the Union.

WE WILL make whole our unit employees, with interest, for our failure to honor the terms of our April 14, 1993 agreement with the Union.

OLYMPIC PLATING INDUSTRIES, INC.